SUPREME COURT OF THE U. STATES.

No. 85.

LESSEE OF EFFIE COONS AND AL., PLAINTIFF IN ERROR,

vs.

CHARLES P. GALLAHER.

IN ERROR TO THE SUPREME COURT OF OHIO.

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Langtree & O'Sullivan, Print.—1840.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To Charles P. Gallaher, greeting:

Whereas, John Stiles, ex dem. Effie Coons, et al., obtained the allowance of our writ of error to the supreme court of the State of Ohio, for the county of Clinton, directed to remove into the said supreme court, to be holden at the city of Washington, on the second Monday in the month of January next, the record of a certain plaint, process, proceedings, and judgment in an action of ejectment, wherein you, the said John Stiles, ex dem. Effie Coons, et al. in that action lately recovered against the said John Stiles, ex dem. Effie Coons, et al., a judgment for costs, as by the said record in the said supreme court aforesaid remaining, appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said John Stiles, ex dem. Effie Coons, et al., we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the judges of the said supreme court, at the city of Washington, at the next term of said court, to be holden on the second Monday in the month of January next, to have the errors aforesaid corrected, and the judgment of our said supreme court thereupon.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, this sixteenth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, and in the 64th year of the American Independence. [SEAL.]

JOHN McLEAN,
Justice Supreme Court U. S.

STATE OF OHIO, *Clinton county, ss:*

Personally appeared before me the subscriber, a justice of the peace, in and for the said county of Clinton, who being duly sworn, doth depose and say that he served a true copy of the within on the defendant, Charles P. Gallaher, on the 31st day of December, A. D. 1839; and further saith not.

WILLIAM FULLER.

Sworn and subscribed before me this 23d day of December, A. D. 1839.

BEBEE TREUSDELL,
Justice Peace.

Justice's fees 25 cents, paid.

Pleas at Wilmington before Ebenezer Lane and Peter Hitchcock, Judges of the supreme court of the State of Ohio, within and for the county of Clinton and State aforesaid, on the fourteenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

JOHN STILES, ex dem. Effie Coons, et al.,
vs.
CHARLES P. GALLAHER. } Ejectment.

Appeal from common pleas.

Be it remembered, that heretofore, to wit: on the 25th day of October, in the year of our Lord one thousand eight hundred and thirty-seven, John Stiles, ex dem. Effie Coons, et al., by B. G. Leonard his attorney, deposited and filed in our said supreme court here, a certified copy of the docket and journal entries, including the final judgment of the court of common pleas of our said county, together with the papers and pleadings in a certain suit or plaint lately pending in said last named court, wherein the said John Stiles, ex dem. Effie Coons, et al., was plaintiff, and Charles P. Gallaher, defendant, in form following, to wit:

Transcript.

Pleas at Wilmington before Benjamin Hinkson, president, and Jesse Hughes, Morris R. Chew, and Abraham How, his associates, judges of our court of common pleas of the county of Clinton and State of Ohio, on the second Monday of May, in the year of our Lord one thousand eight hundred and thirty-seven.

JOHN STILES, ex dem. EFFIE COONS, et al.,
vs.
CHARLES P. GALLAHER, et al. } Ejectment.

Be it remembered, that in the term of May aforesaid, before the judges aforesaid, the plaintiff in the above cause, by B. G. Leonard his attorney, filed in our court of common pleas here their declaration in ejectment against Thomas Nokes, with notice to Charles P. Gallaher and Jehu Reed, tenants in possession of the premises in the said declaration mentioned, in the words following, to wit:

Document A.—*Document A.*

STATE OF OHIO, CLINTON COUNTY, *ss.*
Clinton court of common pleas, May term.

In the year of our Lord one thousand eight hundred and thirty-seven, John Stiles, by B. G. Leonard his attorney, complains of Thomas Nokes, in custody, &c., of a plea of trespass with force and arms, &c. For that,

whereas, Effie Coons, Allen C. McArther, James McD. McArther, William M. Anderson and Eliza his wife, Mary McArthur, John Walke and Frances his wife, and John A. Cinchiveel, on the first day of January, in the year of our Lord eighteen hundred and thirty-seven, at the county of Clinton, and within the jurisdiction of this court, had demised, granted, and to farm let to the said John Stiles all that tract or parcel of land, situate, lying and being in the said county, and known and designated as survey No. 12,352, on the waters of the Rattlesnake fork of Paint creek, in the name of Thomas J. McArther, and in the Virginia military district; also twelve hundred acres of arable land, twelve hundred acres of wood land, twelve hundred acres of pasture land, 1200 acres of meadow land, twelve hundred acres of land covered with water, and twelve hundred acres of land, with the appurtenances: to have and to hold the premises aforesaid, with the appurtenances, to the said John Stiles and his assigns, for and during the full end and term of twenty-one years from thence next following, and fully to be complete and ended; by virtue of which said demise the said John Stiles entered into the premises aforesaid, and was thereof possessed, until the said Thomas Nokes, afterwards, to wit: on the second day of January, in the year last aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, with force and arms entered into the premises aforesaid, with the appurtenances which the said Effie, Allen C., James McD., William M. and wife Mary, John Walke and wife, and John A., had demised to the said John Stiles, in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said John Stiles from his said farm, and other wrongs to the said John Stiles then and there did, against the peace and to the damage of the said John Stiles one thousand dollars, and therefore he brings suit, &c.

B. G. LEONARD,
Plaintiff's Attorney.

I am informed that you are in possession of or claim title to the premises in the within declaration of ejectment named, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the same, do advise you that you appear in the court of common pleas of Clinton county, on the first day of next term, by some attorney of that court, and that then and there, by a rule to be made of the said court, you cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

Your friend, THOMAS NOKES.

To , tenant in possession.

Dated 29th March, 1837.

A copy of which was duly served on Charles P. Gallaher and Jehu Reed, as per return made thereon, to wit:

JOHN STILES, ex dem. Effie Coons, et al.,
vs.
THOMAS NOKES. } Ejectment.

Be it remembered that John Carman, sheriff of the county of Clinton, personally appeared in open court, and makes oath and saith, that he, on the 20th day of April, A. D. 1837, did personally serve Charles P. Gallaher and Jehu Reed, tenants in possession of the premises in the within declaration mentioned, or of part thereof, each with a true copy of the within declaration and notice, and at the same time, acquainted the said Charles P. Gallaher and Jehu Reed, with the intent and meaning of the said declaration and notice; and that on the twenty-first day of April, 1837, he did personally serve Samuel Spurgeon, John Floyd and Daniel Paris, tenants in possession of the premises in the within declaration mentioned, or of part thereof, each with a true copy of the within declaration and notice, and at the same time acquainted the said Samuel Spurgeon, John Floyd and Daniel Paris, with the intent and meaning of the said declaration and notice.

JOHN CARMAN, Sheriff.

Sworn to, and subscribed in open court, 8th May, A. D. 1837.
ISAIAH MORRIS, Clerk.

I, Patrick Douglass, do hereby acknowledge myself bail for costs in this case, for the lessors of the plaintiff. Witness my hand the 10th day of May, 1837.

P. DOUGLASS.

Witness:
ISAIAH MORRIS.

And thereupon afterwards, in the same term of May last aforesaid, before the judges aforesaid, by consent of parties, it is ordered that Charles P. Gallaher be made defendant herein, in the place of the now defendant Thomas Nokes. And thereupon the consent rule and plea of not guilty is filed, and is in form following, to wit:

Document (B.)—*Doc. B.*

JOHN STILES, ex dem. Effie Coons, et al.
vs.
THOMAS NOKES. }

On motion to the court it is ordered, that Charles P. Gallaher be made defendant herein, in the place of the now defendant Thomas Nokes.

THOMAS NOKES, ex dem. Effie Coons, et al.
vs.
CHARLES P. GALLAHER.

And the said Charles P. Gallaher comes and confesses the lease, entry and ouster in the said declaration mentioned, and admits himself to be in possession of every part and parcel of the premises in said declaration mentioned, and claims the same; and of this he puts himself upon the country: and the said John Stiles doth the like.

S. BUCK, Att'y for Deft.

And in the same term last aforesaid, "motion by defendant's attorney for additional security for costs in this case. Whereupon all further process of and upon the premises aforesaid, between the parties aforesaid, is continued until the second Monday of August next.

On which day, to wit: the second Monday of August aforesaid, that is to say, the second Monday of August, in the year of our Lord one thousand eight hundred and thirty-seven, before Benjamin Hinkson, President, and Jesse Hughes, Morris R. Chew and Abraham How, his associates, judges of the same court here at Wilmington, "on this day came the parties by their attorneys, and by consent the intervention of a jury is waived, and this cause is submitted to the court upon the issue joined between the parties, and the court being fully advised in the premises, do say, that the defendant, Charles P. Gallaher, is not guilty of the trespass or ejectment laid to his charge in manner and form as the said John Stiles hath complained against him. Therefore it is considered that the said Chas. P. Gallaher go hence without day, and recover of the said John Stiles, (the lessor of the plaintiff,) his costs herein expended. The defendant's costs herein are taxed to five dollars and forty-two cents—plaintiff's costs herein are taxed to six dollars and fifty-three cents. And in the term of August aforesaid, before the judges aforesaid, here at Wilmington, the said plaintiffs, by their attorney aforesaid, entered upon the records of our said court here notice of appeal from the judgment aforesaid, of our said court here, to the supreme court of the State of Ohio, next to be holden at Wilmington, within and for said county of Clinton.

Afterwards, to wit: on the 4th day of September, A. D. 1837, the said plaintiffs, together with Patrick Douglass and George S. Jenkins, executed bond in behalf of the plaintiffs in this case, in pursuance of the notice aforesaid, on appeal to the said Charles P. Gallaher, in the sum of one hundred and one dollars, conditioned according to law.

THE STATE OF OHIO, CLINTON COUNTY, *ss.*

I, Lawrence Fitzhugh, pro. tem. clerk of the court of common pleas, of the county of Clinton aforesaid, do hereby certify that the foregoing contains copies of the docket and journal entries, including the final judgment of our said court here, in the above case, and that the documents marked A. and B. are the original papers and pleadings in this case.

In testimony whereof I hereunto set my hand and affix the seal of our [SEAL.] said court of common pleas, at Wilmington, this 18th day of October, Anno Domini, 1837.

L. FITZHUGH, Clk. pro tem.

On which day, to wit: the fourteenth day of May aforesaid, that is to say, the fourteenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, before the judges aforesaid of our said Supreme Court here at Wilmington, came the parties aforesaid, by their attorneys aforesaid. And thereupon the sheriff of the county of Clinton aforesaid is commanded that he cause immediately to come before the court here, twelve good and lawful men of the county aforesaid, who are neither to the said plaintiff nor to the said defendant in any wise related, to recognise, &c., because as well, &c., and the jurors of the said jury by the sheriff of the county aforesaid for this purpose empannelled and returned, to wit: Robertson Hunley, Micajah Bailey, James Hartman, Jonathan Hodgson, Isaac Collett, William Hibben, Artemas Nickerson, James Fife, Henry Harvey, William B. Griffith, John McKinsey and Robert Dwiggins, good and lawful men of the county of Clinton aforesaid, duly empannelled, sworn and affirmed, well and truly to try the issue joined between the parties, upon their oaths and affirmations, do say, that the said Charles P. Gallaher is guilty of the trespass and ejectment laid to his charge, in manner and form as the said John Stiles has complained against him, and they assess the damages of the said John Stiles by reason thereof to six cents. The defendant by his attorney moves the court here for a new trial, for reason on file, and the same is reserved for decision in the court in bank. And in the term of May aforesaid, before the judges aforesaid, here at Wilmington, the said plaintiff and defendant, by their attorneys aforesaid, filed in our said court here a statement of evidence and facts in the motion for new trial, together with the documents therein referred to, in form following, to wit:

Statement of evidence and facts on motion for new trial.

CLINTON SUPREME COURT.

The Lessee of EFFIE COONS & others,
vs.
CHARLES P. GALLAHER.

The plaintiff on the trial of this case exhibited a patent for the land in controversy, situate in the military district, in the county of Clinton, to Thomas J. McArther, bearing date 12th November, 1823, and marked A. The defendant was admitted to be in possession of the premises in controversy, being survey No. 12,352, on which said patent issued, and the lessors of the plaintiff were admitted the heirs and legal representatives of the said McArther, at the date of the demise laid in the declaration, and at the commencement of this suit; here the plaintiff rested his case.

The defendant then offered in evidence a certified copy of entry No. 729, and the survey thereon; and the land in controversy was admitted to be included in the said survey, which is made a part hereof, marked B, as also the following deeds and certificates of sale for taxes marked (C.) (D.) (E.) (F.) claiming title under the same, and rested his case. The plaintiff then proved by Henry Massie the matter stated on his written statement, herewith filed and marked (G.); as also gave in evidence the deposition of Allen Latham and the exhibits therein referred to, and rested his case; and thereupon, by consent, a verdict was taken for the plaintiff, subject to the opinion of the court on a motion for a new trial by defendant.

The defendant asks for a new trial on the following grounds: 1st. That the verdict is against law and evidence, and for that the court erred in suffering plaintiff's patent to go to the jury: which motion is reserved by the court for hearing at the special session at Columbus.

B. G. LEONARD, for plff.
S. BUCK, Atty. for deft.

Dated 16th May, 1838.

Document A. referred to.

James Monroe, President of the United States of America—to all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by John Trigvant, a surveyor for the war to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 1st day of August, in the year 1790, entitled "an act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Sciota," and other acts of the said Congress amendatory of the said act. There is granted by the United States unto *to* Thomas McArther, and unto his heirs, said McArther being assignee of John Woodbridge, assignee of Cadwallader Wallace, assignee of said Trigvant, a certain tract of land containing twelve hundred acres, situate between the Little Miami and Sciota rivers, northwest of the river Ohio, as by survey bearing date the 22nd day of October, in the year 1823, and bounded and described as follows, to wit: survey of twelve hundred acres of land on part of a military warrant No. 2377, in favor of said Trigvant, the whole thereof being for six thousand acres, on the waters of the Rattlesnake fork of Paint creek: beginning at a white oak, black oak and maple, east corner, to Clement Biddle's survey No. 727, in the line of Presley Nevill's survey No. 763; thence with Biddle's line north forty-five degrees, west four hundred poles to a branch, at three hundred and eighty poles to an ash and two elms, north corner, to said survey; thence north forty-five degrees, east four hundred and eighty poles to an elm, ash and hickory, west corner, to Nathaniel Burwell's line, south forty-five degrees, east four hundred poles, crossing a

branch at three hundred and twenty poles to an ash, elm and hickory, south corner, to said survey in the line of said Nevill's survey No. 766; thence with said line passing three cherry trees, the west corner of said survey, and with the line of his survey No. 763, S. 45, W. 480 poles to the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said Thomas J. McArther, and his heirs and assigns forever.

In witness whereof, the said James Monroe, President of the United States of America, hath caused the seal of the general land office to be hereunto affixed, and signed the same with his hand, [L. S.] at the city of Washington, the 12th day of November, in the year of our Lord one thousand eight hundred and 23, and of the independence of the United States of America the 48th.

By the President: JAMES MONROE.

GEORGE GRAHAM,
Commissioner of the General Land Office.

GENERAL LAND OFFICE.

I hereby certify that the foregoing is a true copy of the patent on record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused [L. S.] the seal of this office to be affixed, at the city of Washington, this thirtieth day of July, in the year of our Lord 1834.

ELIJAH HAYWORD,
Commissioner.

Document B. referred to.

Surveyed for John Tench, ass'ee, 1200 acres of land on part of a military warrant, No. 2377, on the waters of Paint creek, beginning at a white oak, black oak and maple, east corner to Clement Biddle's survey

(For original of plat, see page 11.)

No. 727, running with his line N. 45, W. 400 poles, crossing a branch at 380 poles to an ash and 2 elms, north corner to Biddle, and east corner to William Lindsey's survey No. 732; thence N. 45, E. 480 poles to an

ash, elm and hickory; thence S. 45, E. 400 poles, crossing a branch at 320 poles to an ash, elm and hickory; thence S. 45, W. 480 poles to the beginning.

JOHN OBANNON, D. S.
March 7th, 1794. SAMUEL BRANNON,
NATHANIEL TUMBLESTON, C. C.
June 24th, 1796. CHARLES PIGMAN, M.

(436. A.)

1787, August 8th. John Tench, ass'ee, enters 1,200 acres of land, part of a military warrant, No. 2,377, beginning at the north corner of Clement Biddle's entry, No. 727, running S. E. with Biddle's line 400 poles; thence N. E. at right angles for quantity.

SURVEYOR'S OFFICE,
for the Virginia Military District in Ohio.

I, Allen Latham, surveyor of said district, do certify, that the within copy of survey No. 729, and entry No. 729, for 1,200 acres, in the name of John Tench, ass'ee, are truly transcribed from the records of said office.
Given under my hand and seal of office, this 25th April, A. D. 1838.
ALLEN LATHAM, [L. S.]

THE STATE OF OHIO, ROSS COUNTY, *ss.*

Personally came before me, the subscriber, a justice of the peace in and for said county, Allen Latham, surveyor of the Virginia military district, in the State of Ohio, and being by me duly sworn, doth depose and say, that the foregoing copies *is* truly transcribed from the records of his office: further saith not.
ALLEN LATHAM.

Sworn to and subscribed before me, this 25th day of April, 1838.
WM. CREIGHTON, Senr. J. P.

Document C. referred to.

This indenture witnesseth, that whereas, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and twenty-three, for and in consideration of the sum of nineteen dollars and seven cents and one mill, to me, John McManis, county auditor of Clinton county, in hand paid, the receipt whereof is duly acknowledged, as appears by a certificate of sale to William Rhonemus, for the land herein after described, sold by me, John McManis, county auditor aforesaid, to the said William Rhonemus, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and twenty-three, for arrearages of tax due from John Tench's heirs to the State of Ohio, for the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-one, and

one thousand eight hundred and twenty-two, for lands entered in the name of John Tench's heirs for taxation, to wit: forty-five acres of land, part of survey No. 729, beginning at an ash and hickory, east corner of the original survey; thence with the line thereof S. 45, W. 85 poles to a stake in said line, corner, to James Gallaher, where a hickory 24 inches diameter bears S. 58, E. 12 links, and a black ash 4 inches bears N. 56, W. 20 links, and a red oak 5 inches bears S. 58, E. 12 links; thence with Gallaher's line N. 45½, W. 84 poles to a white oak and ash in said line; thence N. 45, E. 87 poles, crossing the west fork of Rattlesnake, at 67 poles, to 3 hickories in the northeast line of the original survey; thence with said line S. 44, E. 84 poles, crossing the creek at 5 poles, to the beginning. Now, know you, that I, John McManis, auditor of Clinton county aforesaid, for, and in consideration of the premises aforesaid, by virtue of the authority in me vested, have granted, conveyed and confirmed, and by these presents do grant, convey and confirm, unto the said William Rhonemus, and his heirs and assigns, the said forty-five acres of land, together with all improvements whatsoever to the premises belonging, or in any wise appertaining, and the reversions, remainders and profits thereof, and all the estate, right, title and interest of them, the said John Tench's heirs, or of the former proprietor of, in, and to the same; to have and to hold the lands hereby conveyed, with all and singular the premises, and every part and parcel thereof, with every of the appurtenances unto the said William Rhonemus, his heirs and assigns forever.

In testimony whereof, I, the said John McManis, auditor of the county aforesaid, have hereunto set my hand and seal this eleventh day of September, in the year of our Lord one thousand eight hundred and twenty-three.

JOHN McMANIS, [SEAL.]
Auditor of Clinton County.

Signed, sealed and delivered, in presence of
DANIEL RADCLIFF,
BENJ. HINKSON.

THE STATE OF OHIO, Clinton County, *ss.*

Personally came before me the undersigned, an acting justice of the peace within and for said county, the above named John McManis, and in his official capacity as auditor of Clinton county acknowledged the above signing and sealing to be his act and deed for the purposes therein mentioned. Given under my hand and seal this 11th day of September, A. D. 1823.

DANIEL RADCLIFF, [SEAL.]
Justice of the Peace.

I do hereby assign all title to the within land to Charles P. Gallaher, for the sum of seventy-seven dollars and thirty-eight cents to me paid, and bind myself to make a quit claim deed, if called upon, the sum above mentioned being the purchase money, penalty, interest and tax by me paid, up to this January the 24th, A. D. 1834.

WM. RHONEMUS.

No. 130.

THE STATE OF OHIO, Clinton County, *ss.*

RECORDER'S OFFICE.

This deed was entered for record 17th September, and recorded 13th October, 1824, in book D, pages 126 and 127, one of the land records for Clinton county aforesaid.

JOHN McMANIS, Recorder C. C.

Doc. ref'd to.

Whereas, the Legislature of the State of Ohio did, on the 27th day of January, in the year of our Lord one thousand eight hundred and six, pass an act, entitled "An act levying a State tax;" and whereas, the act aforesaid has divided the State aforesaid into six collection districts, and the said act has declared and provided that all lands of non-residents situate in the Virginia military district, the lands sold at the Chillicothe land office, and the French grant, shall compose the second collection district; and that a collector shall be appointed by the Legislature aforesaid, and commissioned by the governor.

Therefore, this indenture witnesseth, that I, A. J. Williams, being duly appointed by the legislature aforesaid, and commissioned according to law, collector of non-residents' taxes for the second collection district, for and in consideration of the sum of seven dollars and twenty-six cents, to Thomas Scott, late collector of said district, in hand paid, the receipt whereof he hath duly acknowledged, by certificate of sale to James Gallaher, ass'ee, for the hereinafter described tract of land, sold by said Thomas Scott, collector of the said district, on the ninth day of December, in the year of our Lord one thousand eight hundred and six, for arrearages of taxes due from John Tench, to the State aforesaid, for the year one thousand eight hundred and four, five, and six, for lands entered in the name of the said John Tench, for taxation, lying in the district aforesaid, agreeably to the before recited act of the Legislature of the State aforesaid, entitled "An act levying a State tax," hath by authority thereof conveyed, granted, bargained, sold, aliened, and confirmed, and by these presents, doth convey, grant, bargain, sell, alien and confirm unto the said James Gallaher, his heirs and assigns, forever, three hundred acres of land, bounded and described as follows, to wit: being part of a tract containing twelve hundred acres, No. 729, beginning at a black oak, white oak and maple, south corner of the original survey; thence with the southwest line thereof, N. 43¾, W. 105 poles, to two hickories and a dogwood in said line and corner, to a tract of five hundred acres, formerly sold for tax out of said survey; thence with the line thereof N. 45, E. 447½ poles, passing the corner of said five hundred acre survey at 271 poles, to a black ash, from which an elm 12 inches in diameter bears N. 83, E. 21 links, and a sugar tree 4 inches in diameter N. 62, E. 24 links; thence S. 45, E. 109 poles to a stake in the southeast line of the original survey, from which a hickory 24 inches in diameter bears S. 21, E. 12

links; a red oak 5 inches in diameter bears S. 58, E. 12, and a black ash 4 inches in diameter bears N. 50 W. 20 links; thence with said line correcting the course south, 50¼, W. 450 poles to the beginning; together with all improvements and appurtenances whatsoever to the said premises belonging, or in anywise appertaining, and the reversions, remainders and profits thereof, and all the estate, right, title, interest, property, claim and demand, of him, the said John Tench, of, in and to the same; to have and to hold the lands hereby conveyed, with all and singular the premises and every part and parcel thereof, with every of the appurtenances, unto the said James Gallaher, his heirs and assigns, forever.

In testimony whereof, I, the said A. J. Williams, collector of the said second collection district, have hereunto set my hand and seal, this twenty-sixth day of September, one thousand eight hundred and eleven.

A. J. WILLIAMS. [L. S.]

Signed, sealed and delivered in the presence of
W. DUN,
JOHN FERGUSON.

THE STATE OF OHIO, Ross County, *ss.*

This day came the within named A. J. Williams, before me the subscriber, a justice of the peace in and for the county aforesaid, and acknowledged the signing, sealing and delivering of the within indenture for the purposes therein mentioned. Given under my hand and seal this 26th day of Sept., 1811.

JOHN FERGUSON. [L. S.]

No. 405. Rec'd for record 19th July, 1814. Recorded the 25th day of August, 1814, in book A, pages 406 and 407, one of the land records for the county of Clinton, Ohio.

ROB'T EACHUS,
Recorder C. C'ty.

Doc. E. ref'd to.

To the County Surveyor, Clinton County.

I, John McManis, county auditor for Clinton county, do hereby certify, that 43 acres of land was this day sold unto Josephus Reed and Cyrus Reed for the sum of sixteen dollars eight cents and nine mills, being part of a tract of land entered for taxation in the name of John Tench's heirs, by number of entry 729. You will therefore proceed, at the request of the purchaser aforesaid, to lay off by metes and bounds, as near a square as may be at the most northwesterly corner of said tract, the quantity of land sold as aforesaid.

In witness whereof, I have hereunto set my hand at Wilmington, in the county aforesaid, this twelfth day of December, 1825.

JOHN McMANIS,
County Auditor.

January 25th, 1834.

For and in consideration of thirty-eight dollars thirty cents and three mills, we do assign our right and title to the within certificate to Charles P. Gallaher, as witness our hands.

JOSEPHUS REED,
CYRUS REED.

N. B. It being the purchase, tax, penalty and interest by us paid up to this time, $38 30 3m.

Attest : WM. RHONEMUS.

Doc. F. ref'd to.

To the Surveyor of Clinton County.

I, Bebee Truesdell, county auditor for Clinton county, do hereby certify, that 267 acres of land was this day sold unto William Rhonemus and Josephus Reed, in common, for the sum of three dollars eighteen cents and two mills, being an entire tract of land entered for taxation in the name of John Tench, by number of entry 729. You will therefore proceed, at the request of the purchaser aforesaid, to lay off by metes and bounds the quantity of land sold as aforesaid.

In witness whereof, I have hereunto set my hand, at Wilmington, in the county aforesaid, this 31st day of December, 1827.

BEBEE TRUESDELL,
County Auditor.

For the sum of twenty-eight dollars sixty-five cents and three mills, to us paid, it being the amount of purchase, tax, interest and penalty by us paid to this time, we do assign all interest and claim to the within certificate to Charles P. Gallaher; as witness our hands, this 25th of January, A. D. 1834.

$28 65 3m.

WM. RHONEMUS,
JOSEPHUS REED.

Doc. G. ref'd to.

The Lessee of EFFIE COONS and others,
vs.
CHARLES P. GALLAHER.

Mr. Henry Massie, examined for the plaintiff, stated that the practice of the surveyor's office was, never to deliver out the original assignments except with the original warrant, which is only delivered out with the plat of the last survey; that is, when the plat of the last survey remain-

ing in the office, and which exhausts the warrant, is delivered out; but before this, only certified copies of the assignments and warrant are delivered out of the office. HENRY MASSIE.

Latham's Dep. referred to.

In pursuance of the annexed notice, I have caused to come before me, at the office of Allen Latham, in the city of Chillicothe, on the 4th day of May, 1838, between the hours of 8 o'clock, A. M. and 6 P. M. of said day, the said Allen Latham, who, being by me duly sworn, doth depose and say, as follows; which deposition is to be read in evidence in a cause now pending, and undetermined, in the supreme court of Clinton county, Ohio, wherein John Stiles, ex dem. Effie Coons and others, *is* plaintiffs, and C. P. Gallaher is defendant; both plaintiff and defendant being present by their counsel.

Allen Latham, of the county of Ross, of lawful age, being first duly sworn by me, as hereinafter certified, deposes and says, that on the day of 1829, he was commissioned by the President of the United States, surveyor for the Virginia military district, in the State of Ohio, which office he still holds. That shortly after the receipt of said commission he was put in possession of all the books and papers appertaining to said office, as kept and preserved by Col. Richard C. Anderson, the late surveyor of said district; that the papers marked A. herewith enclosed, *is* a true copy of warrant No. 2,377, with the endorsement thereon, directing it to be laid in five equal surveys of 1,200 acres each, signed by John Trezvant, and also of an endorsement thereon by said R. C. Anderson, late surveyor, giving the numbers of entries in which it had been originally located, and quantity of acres, in the name of John Tench; also, copy of an assignment from said John Trezvant to Cadwallader Wallace, dated 14th September, 1814, and a copy of said Wallace's assignment of one equal half, dated 9th December, 1814, to John Woodbridge; and a copy of said Woodbridge's assignment of all his right and title therein, to Thomas J. McArther, dated 6th May, 1823, which said original warrant so endorsed, with the said assignments, were found by said deponent in the files, and are still on file in said office. That the papers, marked C, contain a true copy of a letter of attorney from said Cadwallader Wallace, and Thomas J. McArther, assignees, dated 6th June, 1823, to Duncan McArther, authorising him to withdraw said warrant No. 2,377, which has been improperly located and surveyed in the name of John Tench, and relocate the same; also a copy of said Duncan McArther's letter to said Anderson, surveyor, requesting him to withdraw, and relocate on the same ground, the following entries which were made on said warrant in the name of John Tench, to wit: No. 729 for 1,200 acres, No. 1,273, for 1,200 acres, No. 788 for 1,000 acres, and No. 9,822 for 1,400 acres; the first of these entries to be located in the name of Thomas Jefferson McArther, the second in the name of Cadwallader Wallace, and Thomas Jefferson McArther, and the two last in the name of said Wallace; also, copies of the entries No. 12,352, No. 12,353, No. 12,354, and No. 12,355, as furnished by said Duncan McArther, as attorney in fact, by which said

relocations were to be made; also, a copy of a letter from George Graham, the then Commissioner of the General Land Office of the U. States, dated 11th July, 1823, to said Duncan McArther, saying, if Colonel Anderson caused a survey to be made in the name of Tench, without an assignment to him of the warrant, such survey is void; also, a copy of the letter of said Duncan McArther, to said R. C. Anderson, transmitting the commissioner said letter, dated July 21st, 1823, all of which original papers of which the papers, marked C, are copies, are on the regular files of said office. That the paper, marked B, contains accurate copies of entries No. 788, No. 1,273, No. 729, No. 1,401, No. 456, No. 5,286, and No. 9,822, as made in the name of said John Tench, on the aforesaid warrant No. 2,377, copied in paper marked A; also a copy of survey No. 729, for 1,200 acres, in the name of John Tench, said papers marked B; also, contain a copy of the re-entry of said John Tench's entry No. 729, of 1,200 acres in entry No. 12,352, in the name of Thomas J. McArther, ass'ee, for 1,200 acres; also, a copy of the re-entry of said John Tench's entry No. 1,273, of 1,200 acres, in entry No. 12,353, in the name of Cadwallader Wallace, and Thomas J. McArther, for 1,200 acres; also, a copy of the re-entry of John Tench's entry No. 788, of which 1,000 acres only then remained in the name of Cadwallader Wallace, in entry No. 12,354 for 1,000 acres; also, a copy of the re-entry of John Tench's entry No. 9,822, of 1,400 acres in entry No. 12,355, for 1,400 acres, in name of Cadwallader Wallace. Said papers, marked B, also contain a copy of the re-entry of said John Tench's survey No. 729, of 1,200 acres in survey No. 15,352, in the name of Thomas J. McArther, for 1,200 acres; all which said copies are truly transcribed from the books and records of said office, and made part of this deposition. It also appears from the records, that a certified plat and certificate of survey of said last named survey No. 12,352, was sent to D. McArther, on the 26th day of October, 1823, and that no such certificate, plat of survey No. 729, in the name of John Tench, had ever been delivered from said office, nor can be, inasmuch as the warrant on which it had been made is satisfied in survey No. 12,352, in the name of Thomas J. McArther. Said deponent further deposes, that from a careful examination of the registry of warrants and the records, it appears no other warrant bearing the same number with that of John Trezvant, for 6,000 acres, No. 2,377, has ever been filed in or acted on in said office. And it also appears from the documents and records of the office, that survey No. 729, in the name of John Tench, as copied in papers marked B, for 1,200 acres, was made on the said identical warrant.

Question by plaintiff's counsel. Is there any assignment on the files, or within the office, of the said warrant No. 2,377, to John Tench, or has there been at any time since you have been surveyor?

Answer. I have probably seen every paper of this character in the office, and am satisfied there is not now any such assignment in the office, and that there was no such assignment in the office when the papers came into my possession.

Question by same. How long have you been acquainted with the office; and during the period of such your acquaintance, has there been

any assignment on the files or within the office, of the said warrant No. 2,377, to John Tench?

Answer. From the summer of 1819 until the death of Colonel Anderson, in the fall of 1826, I had frequent occasion for examining the books and papers of his office, in the way of business, and having married into his family, had free access to all the papers, and as long ago as 1819; it was generally understood among the locators, that the entries made in the name of John Tench had been made without any assignment to him of the warrant. As long ago as 1822, I made search among the files, for such assignment, to ascertain if any such was there, and found none, and was told by Colonel Anderson that no such assignment, to John Tench, had been filed with him in the office.

Who are the heirs at law of Thomas J. McArther? and who were such at any time from the 1st January, 1837, and during the whole of that year?

Answer. Thomas J. McArther died without issue by marriage, and has left as his present heirs of law, Effie Coons, his sister, (now, and for several years past, a single lady,) Allen C. McArther, and James McD. McArther, his brothers, Eliza Ann Anderson, wife of William M. Anderson, and married before 1st January, 1837; and Mary Trimble, wife of Carey A. Trimble, married on the 25th December, 1837, his sisters; and Francis M. Walke, wife of John Walke, married before the 1st of January, 1837; and John Allen Kerchival, the two last named, Francis and John A., only children of Margaret C. Kerchival, another sister of Thomas J. McArther, who died several years ago, and before him the said Thomas J.; said Thomas J. McArther had no other brothers and sisters at the time of his death, and left no others deceased who had children; and further this deponent saith not. ALLEN LATHAM.

I agree that the foregoing deposition may be read in evidence in Clinton Supreme Court, between the lessee of Effie Coons and others, *vs.* C. P. Gallaher, without further proof, that William Creighton, Senr., before whom the same is taken, is a magistrate duly authorized to take depositions, and I waive all further proof of the said Creighton's being a justice of the peace, admitting him to be such, duly authorized to take depositions; and I further agree that the said deposition, or a copy of the same, may be read in evidence in the cause now pending in Greene Sup. Court, between the lessee of C. Wallace and others, *vs.* Stevens and others. S. BUCK, for Deft.

Dated 4th May, 1838.

THE STATE OF OHIO, *Ross County, ss.*

I, William Creighton, Senr., a justice of the peace in and for said county, do hereby certify that Allen Latham was by me sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed was reduced to writing by himself, and taken at the time and place in the notice specified.

Given under my hand and seal this 4th day of May, A. D. 1838.

WM. CREIGHTON, Senr., J. P. [SEAL.]

CLINTON, SUPREME COURT.

JOHN STILES ex dem. EFFIE COONS et al.
vs.
C. P. GALLAHER.

The defendant will take notice that on the 4th day of May, A. D. 1838, between the hours of 8 o'clock A. M. and 6 P. M. of that day, at the office of Allen Latham, Esq., in the city of Chillicothe, the plaintiff will proceed to take the deposition of the said Latham and others, which will be used on the trial of the above cause.

Yours, &c.,

B. G. LEONARD, Att'y for plff.

Dated 26th April, 1838.

To the Deft. or SAML. BUCK, Esq. their Atty.

I acknowledge due service of a true copy of the above, this 28th day of April, 1838, at Wilmington.

S. BUCK for Deft., Atty. for Deft.

A.—*Doc. A referred to in A. Latham's Deposition.*

Land office, military warrant No. 2377.

To the principal surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia.

This shall be your warrant to survey and lay off in one or more surveys, for John Trezvant, his heirs or assigns, the quantity of six thousand acres of land, due unto the said John Trezvant, in consideration of his services for the war, as a surgeon in the Virginia continental line, agreeably to a certificate from the Governor and counsel, which is received into the land office.

[L. S.] Given under my hand and the seal of said office, this third day of February, in the year one thousand seven hundred and 84.

(Signed) JOHN HARVIE,
Register Land Office.

Acres.

(Endorsed)—To be laid in five equal surveys of twelve hundred acres each.

JOHN TREZVANT.

(Endorsed by surveyor)—Dr. John Trezvant (5) 6,000, No. 788, 1,200, 1,273, 1,200, 729, 1,200, 1,401, 1,200, 456, 1,200, 6,000.

JOHN TENCH.

For value received, I, John Trezvant, of Sussex county, in the Commonwealth of Virginia, late surgeon in the continental army of the United States, during the revolutionary war with Great Britain, do hereby assign, transfer, and convey, unto Cadwallader Wallace, all my right and title to any and all land to which I have a claim, in consequence of my services as a surgeon in the army, and war aforesaid, and for all land surveyed, or that may be surveyed, in satisfaction of any warrant or warrants

granted to me by the Commonwealth of Virginia, or the United States. I do hereby request the proper officer of government to issue patents to the said Cadwallader Wallace or his assigns.

Given under my hand and seal this fourteenth day of September, 1814.

JOHN TREZVANT, [SEAL.]

Witness, NATHANIEL ROWLAND,
JOSEPH ROWLAND.

The purchase, from Doctor John Trezvant, of the warrants and land referred to by the within assignments having been made by me, on the joint account of John Woodbridge and myself; therefore, I do hereby assign, transfer, and convey, unto said John Woodbridge, one equal half of all land to which I may have a right by virtue of the within assignment, and request that a patent or patents may be issued to him, or his assigns, for the same.

Witness my hand this 9th day of December, 1814.

CADWALLADER WALLACE.

Witness, ROBERT KERCHAVAL,
AMOS DAVIDSON.

For value received, I do hereby assign, transfer, and convey, unto Thomas Jefferson McArther, all the right and title which may be vested in me, by the above assignment, from Cadwallader Wallace, and the within assignment from Doctor John Trezvant, to the land warrant, and land granted the said Trezvant for his military services in the war of the revolution.

Given under my hand the 6th May, 1823.

JOHN WOODBRIDGE.

Attest: AARON A. DAILEY,
HENRY JACK.

SURVEYOR'S OFFICE,
For the Virginia Military District within the State of Ohio.

I, Allen Latham, surveyor of said military district, do certify that the foregoing is a true copy of warrant No. 2,377, in the name of John Trezvant, and his assignment thereof, to Cadwallader Wallace, and of said Wallace's assignment of a moiety of same to John Woodbridge, and of said Woodbridge's assignment of same to Thomas J. McArther, in my possession, not satisfied.

Given under my hand and seal of office at Chillicothe, this [L. S.] 4th day of May, one thousand eight hundred and thirty-eight, and the 62d year of the independence of the United States.

ALLEN LATHAM.

B.—*Doc. B referred to in A Latham's Deposition.*

200 *acres withdrawn—ent'd* 426, (*B.*) 388, *co'd* 356, (*C.*) *acres s'v'd.*

No. 788. 1787, August 9th. John Tench, assignee, enters 1,200 acres of land, part of a military warrant No. 2,377, on the waters of Paint

creek, beginning at the lower, northeasterly corner of James Lucas' entry No. 404, running up with Lucas' back line, northeasterly, 400 poles; thence, at right angles, northeasterly for quantity.

155, *B.*

No. 1,273. 1798, Nov. 16th. John Tench, assignee, enters 1,200 acres of land, on part of a military warrant No. 2,377, on the waters of the Little Miami, beginning at the northwest corner of Clement Biddle's entry No. 1,228, running west 400 poles; thence, south, at right angles, for quantity.

N. 729, 436, *S.*

1787, August 8th. John Tench, assignee, enters 1,200 acres of land, part of a military warrant No. 2,377, beginning at the north corner of Clement Biddle's entry 727, running S. E. with Biddle's line 400 poles; thence, N. E. at right angles for quantity.

No. 1,401 *withdrawn—entered* 426, *B.*

1787, August 17th. John Tench, assignee, enters 1,200 acres of land, part of a military warrant No. 2,377, beginning at the N.W. corner of William Moore's entry No. 1,398, running with his line E. 400 poles; thence, at right angles, N. for quantity.

No. 456, 800 *acres withdrawn—entered in* 78 *B,* 427, 167 *C,* 62 *D.*

1787, August 2d. John Tench, assignee, enters 1200 acres of land, part of a military warrant No. 2,377, on the Sciota, beginning at upper corner of Clement Biddle's entry No. 452, running up the river 500 poles when reduced to a straight line; thence, from the general of the river, at right angles for quantity.

No. 5,286, 496 *C.*

1807, March 17th. John Tench withdraws 800 acres of that part of his entry, No. 456, that interferes with John Jolliff's survey No. 450, on part of a military warrant No. 2,377, and re-enters the same on the waters of the east fork of Miami; beginning at the northeast corner of Samuel R. Bradfords, No. 917; thence S. 86, E. 130 poles; N. 60, E. 200 poles; N. 31 E. and from the beginning, S. 5, E. 400 poles; thence N. 85, E. for quantity.

No. 9,822, 397 *C.*

1819, February 6th. John Tench, assignee, enters 1,400 acres of land, on part of a military warrant No. 2,377, on the waters of the north fork of Paint creek: beginning at the northeasterly corner of Thomas Hoff's

survey No. 3,708, in the line of survey No. 6,058, and 6059; thence, 70 E. 190 poles; thence N. 52, E. 12 poles; thence south 215 poles; thence east 284 poles; thence north 184 poles; thence east 72 poles; thence south 63 poles; thence east 53 poles; thence south 76 poles; thence S. 15, E. 408 poles; thence N. 70, W. 192 poles; thence S. 20, W. 152 poles; thence S. 70, E. 20 poles; thence S. 70, W. 82 poles; thence S. 25, W. 103 poles; thence S. 70, W. 84 poles; thence N. 20, W. 242 poles; thence N. 70, E. 104 poles; thence N. 20, W. and from the beginning, S. 20, E. so far that a line N. 70, E. will include the quantity.

Surveyed for John Tench, assignee, 1,200 acres of land, on part of a military warrant No. 2,377, on the waters of Paint creek; beginning at a white oak, black oak, and maple, east corner to Clement Biddle's survey No. 727, running with his line N. 45, W. 400 poles; crossing a branch at 380 poles, to an ash and two elms, north corner to Biddle, and east corner to William Lindsays survey No. 732; thence, N. 45, E. 480 poles, to an ash, elm, and hickory; thence S. 45, E. 400 poles, crossing a branch at 320 poles, to an ash, elm, and hickory; thence S. 45, W. 480 poles, to the beginning.

JOHN O'BANNON, D. S.

March 7th, 1794.

SAMUEL BRANNAN.
NATHANIEL TUMBLESTON, } C. C.
CHARLES PIGMAN, M.

June 24th, 1794.

[For plat see original copy, page 24.]

No. 12,352, 78 *D.*

1823, October 18th. Thomas J. McArther, assignee, enters 1200 acres of land, on part of a military warrant No. 2,377, on the waters of the Rattlesnake fork of Paint creek; beginning at the east corner of Clement Biddle's survey No. 727, in the line of Presley Nevill's survey No. 763; thence, with the line Biddle's survey N. 45, W. 400 poles, to the northeast corner thereof; thence, and from the beginning, N. 45, E. so far that a line N. 45, W. will include the quantity.

No. 12,353, 78 *D.*

Cadwallader Wallace and Thomas J. McArthur, assignees, enter 1,200 acres of land, on part of a military No. 2,377, on the waters of the Little Miami; beginning at the southwest corner of Clement Biddle's survey No.1,298, and northwest corner to Robert Kirk's survey No. 1,336; thence, with Biddle's line, north 480 poles; thence, and from the beginning, west so far that a line north will include the quantity.

No. 12,354, 79, *D.*

Cadwallader Wallace, ass'ee, enters 1,000 acres of land on part of a military warrant, No. 2,377, on the waters of the north fork of Paint creek, beginning at 3 white oaks and two black oaks, easterly or lower back corner to James Lucas' survey, No. 404 on the line of Jacob Warrick's survey No. 2,381; thence with Lucas' line N. 69, W. 400 poles to the line of Peter Garland's survey, No. 807; thence with said line N. 21, E. 480 poles; thence S. 69, E. 293 poles to the line of Wm. McMakin's survey No. 690; thence with said line S. 35, W. 116 poles; thence with another of his lines S. 10, E. so far that a line to the beginning will include the quantity.

No. 12,355, 950 *acres, withdrawn. Ent'd.* 68, 450 *acres. s'v'd.* 78 *and* 79 *D.*

Cadwallader Wallace, ass'ee, enters 1,400 hundred acres of land on part of a military warrant, No. 2,377 on the waters of the north fork of Paint creek, beginning at the northeast corner of Thomas Hoff's survey No. 3,708, in the line of survey No. 6,058 and 659; thence N. 70, E. 190 poles; thence N. 52, E. 12 poles; thence south 215 poles; thence east 284 poles; thence north 184 poles; thence east 172 poles; thence south 63 poles; thence east 53 poles; thence S. 76 poles; thence S. 15, E. 408 poles; thence S. 70, E. 82 poles; thence S. 25, W. 103 poles; thence S. 70, W. 84 poles; thence N. 20, W. 242 poles; thence N. 70, W. 104 poles; thence N. 20, W. and from the beginning, S. 20, E. so far that a line N. 70, E. will include the quantity surveyed for Thomas J. McArther, assignee, 1,200 acres of land on part of a military warrant No. 2,377, on the waters of the Rattlesnake fork of Paint creek, beginning at a white oak, black oak and maple, east corner to Clement Biddle's survey No. 727, in the line of Presley Nevill's survey No. 763; thence with Biddle's line N. 45, W. 400 poles, crossing a branch at 380 poles to an ash and two elms, north corner to said survey; thence N. 45, E. 480 poles to an elm, ash and hickory, west corner to Nathaniel Burvell's survey No. 758; thence with Burvell's line S. 45, E. 400 poles, crossing a branch at 320 poles to an ash, elm and hickory, south corner to said survey in the line of Nevill's survey No. 766; thence with said line, passing three cherry trees, the west corner of said survey, and with the line of his survey No. 763, S. 45, W. 480 poles to the beginning.

(For original of plat see page 26.)

DUNCAN McARTHER, D. S.
October 22d, 1823. SAMUEL BRANNAN,
NATHANIEL TUMBLESTON, C. C.
October 25th, 1823. CHARLES PIGMAN, Mks.

SURVEYOR'S OFFICE,
for the Virginia Military District in the State of Ohio.

I, Allen Latham, surveyor of said district, do certify, that the foregoing copies of entries No. 788, 1,273, 729, 1,401, 456, 5,286, and 9,822, in the name of John Tench, and survey No. 729, in the name of said Tench, and of entries No. 12,352, in the name of Thomas J. McArther, No. 12,353, in the name of Wallace & McArther, Nos. 12,354, and 12,355, in the name of Cadwallader Wallace, and of survey No. 12,352, in the name of Thomas J. McArther, are truly and correctly transcribed from the books and records of said office.

Given under my hand, and seal of said office, at Chillicothe, this 4th [L. S.] day of October, A. D. 1838.

ALLEN LATHAM.

C.

Doc. C. ref'd to in A. Latham's Deposition.

We do hereby authorise, and fully empower, General Duncan McArther, of Ross county, Ohio, for us, and in our names, and for our benefit, to withdraw and relocate any part or all of our land warrant No. 2,377, two thousand three hundred and seventy-seven, of (6,000) six thousand acres, which has been improperly located and surveyed in the name of John Tench; or for us, and in our names, to ask for, or demand of, and receive from Col. Richard C. Anderson, the surveys, or any number of them that have been so made in the name of John Tench; and in all things connected with our said warrant No. 2,377, of 6,000 acres, as touching the location and surveying thereof, and in taking steps to perfect the title thereof, to do and perform all and every act in the premises, as fully, largely and effectually, to all intents and purposes, as we might or could do if personally present. Hereby ratifying and confirming all his acts and doings legally done in pursuance hereof.

Given under our hands and seals, the sixth day of June, in the year one thousand eight hundred and twenty-three.

CADWALLADER WALLACE, [SEAL.]
THOMAS J. McARTHER, [SEAL.]

Attest:
LEVIN BELT,
MATTHEW BONNER.

STATE OF OHIO, ROSS COUNTY, } ss.
Mayor's Office, Chillicothe. }

Be it known, that the within named Cadwallader Wallace and Thomas J. McArther, *and* severally acknowledged the signing and sealing of the within letter of attorney to be their and each of their act and deed, for the purposes therein mentioned.

[Corporation of Chillicothe, Seal.]

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, this sixth day of June, in the year of our Lord one thousand eight hundred and twenty-three.

LEVIN BELT, Mayor.

SOLDIER'S RETREAT, June 18th, 1823.

DEAR SIR: Herewith I hand you an assignment from John Trezvant, late a surgeon in the Virginia continental line, to Cadwallader Wallace, for the land warrant granted to him for his services in said line, with assignments on the back of the first, from said Wallace to John Woodbridge, and from said Woodbridge to Thomas Jefferson McArther, for the one half of the said land warrant, and request that you will file said assignments in your office, with warrant No. 2,377, which was granted to said Trezvant, and I also request that you withdraw and relocate on the same ground the following entries which were made on said warrant in the name of John Tench, to wit: No. 729, for 1,200 acres, No. 1,273, for 1,200 acres, No. 788, for 1000 acres, and No. 9,822, for 1,400 acres; the first of these entries to be relocated in the name of Thomas Jefferson McArther, the second in the name of Cadwallader Wallace and Thomas Jefferson McArther, and the two tract in the name of said Wallace, agreeably to the locations herewith presented, on the third passage hereof, and as attorney in fact for said Wallace, and Thomas J. McArther, bind and obligate the said Wallace and McArther and myself, as their security, to indemnify and exonerate you from all responsibility, liability, or damages you or they, the said Wallace and McArther, or any other person or persons, may sustain under the provisions of the act of Congress, entitled "An act extending the time for locating Virginia military warrants, and returning surveys thereon to the General Land Office," approved March 1st, 1823, or otherwise. I likewise present to you to be filed herewith, a letter of attorney of the said Wallace and McArther to me, authorising and empowering me for them, and in their names, to do and perform all and every act which is, or may be, necessary and proper, relative to the withdrawing, relocating, surveying, &c., of said land warrant No. 2,377, of 600 acres.

I am, dear sir, very respectfully, your obedient servant,

DUNCAN McARTHER,

Attorney in fact for Cadwallader Wallace and Thomas J. McArther, and is their security.

COL. RICHARD C. ANDERSON,

Surveyor of the Virginia military lands in continental establishment. Present.

No. 12,352. Thomas Jefferson McArther, ass'ee, enters 1,200 acres of land on part of a military warrant No. 2,377, on the waters of the Rattlesnake fork of Paint creek, beginning at the east corner of Clement Biddle's survey No. 727, in the line of Presley Nevill's survey No. 763; thence with the line of Biddle's said survey N. 45, W. 400 poles to the north corner thereof; thence and from the beginning N. 45, E. so far that a line N. 45, W. will include the quantity.

No. 12,353. Cadwallader Wallace and Thomas Jefferson McArther, assignees, enter 1,200 acres of land, on part of a military warrant No. 2,377, on the waters of the Little Miami; beginning at the southeast corner of Clement Biddle's survey No. 1,228, and northwest corner to Robert

Kirk's survey No. 1,336; thence, with the line of Biddle's said survey, north 480 poles; thence, and from the beginning west, so far that a line north will include the quantity.

No. 12,354. Cadwallader Wallace, assignee, enters 1,000 acres of land, on part of a military warrant No. 2,377, on the waters of the north fork of Paint creek; beginning at three white oaks and two black oaks easterly, or lower back corner to James Lucas' survey No. 404, in the line of Jacob Warwic'ks survey, No. 2,381; thence, with said Lucas' line, N. 69, W. 400 poles, to the line of Peter Garlanck's survey No. 807; thence, with said line, N. 21, E. 480 poles; thence, S. 69, E. 293 poles, to the line of Wm. McMickin's survey No. 690; thence, with said line, S. 35, W. 116 poles; thence, with another of his lines, S. 10, E. so far that a line to the beginning will contain the quantity.

No. 12,355. Cadwallader Wallace, assignee, enters 1,400 acres of land, on part of a military warrant No. 2,377, on the waters of the north fork of Paint creek; beginning at the northeast corner of Thomas Hoff's survey No. 3,708, in the line of surveys Nos. 6,058 and 6,059: thence N. 70, E. 190 poles; thence N. 52, E. 12 poles; thence south 215 poles; thence east 284 poles; thence north 184 poles; thence east 172 poles; thence south 63 poles; thence east 53 poles; thence south 76 poles; thence S. 15, E. 408 poles; thence S. 70, W. 82 poles; thence S. 25, W. 103 poles; thence S. 70, W. 84 poles; thence N. 20, W. 242 poles; thence N. 70, W. 104 poles; thence N. 20, W. and from beginning S. 20, E. so far that a line N. 70, E. will include the quantity.

DUNCAN McARTHER,
Attorney in fact for Cadwallader Wallace and
Thomas Jefferson McArther.

GENERAL LAND OFFICE,
July 11th, 1823.

SIR: Your letter of the 1st instant, with the enclosed papers, has been received. I am of opinion that the section of the law relative to relocation cannot apply to the case in question. If Colonel Anderson caused a survey to be made in the name of Tench, without any assignment to him of the warrant, such survey is void, and the land surveyed open to occupation by others.

Your letter of the 30th ult. has been received, and the surveys that accompanied it will shortly be acted on.

Very respectfully, sir, your ob't serv't,

GEORGE GRAHAM.

Note.—When the commissioner speaks of surveys, in the above, I presume he means entries.

D. McARTHER.

FRUIT HILL, July 21st, 1823.

DEAR SIR: Upon my return home I wrote to the Commissioner of the General Land Office, and requested his opinion of the 3d section of the act of Congress of the 1st of March, 1823, so far as it could have a bear-

ing on the withdrawing and relocating on the same ground of warrant No. 2,377, now located in the name of John Tench. I gave him a correct history of the whole business, so far as it came within my knowledge. I further requested that if he should have any doubts as to the propriety of withdrawing the entries in the name of Tench, and relocating them on the same ground, that he would consult the attorney general of the United States upon the subject, and by the last mail received the letter on the first page hereof for answer. I hope that you have, ere this, obtained the opinion of the attorney general of the United States on this subject, and that you will now have no hesitation in withdrawing entries Nos. 729, 1,273, 788, and 9,822, in the name of John Tench, and re-entering them, on the same land, in the names of Thomas J. McArther and Cadwallader Wallace, as requested in my letter to you of the 18th of last month; when these entries are made, as I trust they will be, upon the receipt hereof, if not already made, I have to request you to send me copies of them, so that the surveys can be made and returned without delay, as there is no time to be lost on account of the provisions of the statutes of the State, for the limitation of actions.

Respectfully yours,

DUNCAN McARTHER.

Col. RICHARD C. ANDERSON.

SURVEYOR'S OFFICE,
Of the Virginia Military District in Ohio.

I, Allen Latham, surveyor of said district, do certify that the foregoing copy of a letter of attorney, from Cadwallader Wallace and Thomas J. McArther, to Duncan McArther, and the copy of Duncan McArther's letter of June 18th, 1823, to Richard C. Anderson, former surveyor of said district, with the accompanying entries, Nos. 12,352, 12,353, 12,354, and 12,355, filed by said McArther, and the copy of George Graham's, the then Commissioner of the General Land Office, letter of the 11th July, 1823, to Duncan McArther, together with a copy of Duncan McArther's letter of July 21st, 1823, are truly and correctly transcribed from the originals on file in said office.

Given under my hand and seal of said office, this 4th day of
[L. S.] June, Anno Domini one thousand eight hundred and thirty-eight.

ALLEN LATHAM.

Afterwards, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and thirty-eight, the papers and pleadings in this cause, together with the journal entry made herein, at the May term of our said supreme court aforesaid, was certified and transmitted to the court, in bank, in pursuance of the order aforesaid, in form following, to wit:

Certificate to Court in Bank.

JOHN STILES, ex dem. EFFIE COONS, et al.
vs.
CHARLES P. GALLAHER. } Ejectment.

Appeal from Com. Pleas.

This day came the parties by their attorneys, and thereupon came a jury, to wit, Robertson Hundley, Micajah Baily, James Hartman, Jonathan Hodgson, Isaac Collett, William Hibben, Artimas Nickerson, James Fife, Henry Harvey, William B. Griffith, John McKinsey, and Robert Dwiggins, good and lawful men of the county of Clinton aforesaid, duly empannelled, sworn, and affirmed, well and truly to try the issue joined between the parties, upon their oaths and affirmations do say, that the said Charles P. Gallaher is guilty of the trespass and ejectment laid to his charge in manner and form as the said John Stiles has complained against him, and they assess the damages of the said John Stiles, by reason thereof, to six cents. The defendant, by his attorney, moves the court here for a new trial, for reasons on file, and the same is reserved for decision of the court in bank.

THE STATE OF OHIO, *Clinton County, ss.*

I, A. E. Strickle, clerk pro tem. of the supreme court of the State of Ohio, within and for the county of Clinton aforesaid, do hereby certify that the above, and foregoing, is a full and correct copy of the entry made in the journal of said supreme court, in the case of John Stiles, ex dem. Effie Coons, et al., *vs.* Charles P. Gallaher, at the May term of said supreme court, in the year of our Lord one thousand eight hundred and thirty-eight, as now remaining of record in my office; and that the documents herewith enclosed, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, are the original papers filed in said cause.

In testimony whereof I hereunto set my hand and affix the [L. S.] seal of said court at Wilmington, this first day of November, A. D. 1838.

A. E. STRICKLE,
Clk. pro tem. Sup. Court, Clinton County.

Afterwards, to wit, on the 27th day of December, in the year of our Lord one thousand eight hundred and thirty-eight, the decision of the court in bank, of the November term thereof, in the year of our Lord one thousand eight hundred and thirty-eight, was certified and sent to our said supreme court, within and for the county of Clinton aforesaid, here at Wilmington, in form following, to wit:

Coons et al. vs. *Gallaher.*

Court in Bank, November Term, 1838.

New Trial granted by Court in Bank.

LESSEE OF COONS,
vs.
C. P. GALLAHER. } Eject.

This cause came on to be heard upon the motion of the defendant to set aside the verdict herein rendered, and to grant him a new trial, and was agreed by counsel, on consideration whereof it is by the court ordered that said verdict be, and the same hereby is, set aside, and that a new trial be had between the parties aforesaid, the *the* costs to abide the event of the suit, and this cause is continued.

Ordered, That a copy of this entry be certified to the clerk of the supreme court of Clinton county, for entry, &c.

THE STATE OF OHIO, *ss.*

I, Lyne Starling, jr., clerk of the supreme court of the State of Ohio, in bank, certify that the foregoing entry is taken and truly copied from the journals of said court.

Witness my hand, and the seal of said court, at the city of Columbus, [L. s.] this 27th day of December, A. D. 1838.

L. STARLING, jr. Clerk.

Afterwards, to wit: on the 13th day of May, in the year of our Lord one thousand eight hundred and thirty-nine, the time appointed by law for holding the supreme court of the State of Ohio, within, and for the county of Clinton, aforesaid—pleas at Wilmington, before Reuben Wood and Frederick Grimke, judges of said supreme court, here at Wilmington—came the parties aforesaid by their attorneys aforesaid, and by consent of the parties, by their attorneys, the intervention of a jury is waived, and this cause is submitted to the court upon the issue joined, and the court being fully advised in the premises, do find, that the said defendant, Charles P. Gallaher, not guilty of the trespass and ejectment laid to his charge, in manner and form as the said John Stiles hath complained against him. Therefore it is considered by the court here, that the said defendant, Charles P. Gallaher, do go hence without day, and recover of the said John Stiles, ex dem. the lessor of the plaintiff, his costs about his defence in this behalf laid out and expended, which are taxed to thirty-four dollars and thirty-seven and a half cents. The plaintiff's costs herein expended, are taxed to twenty-three dollars one and one half cents. Afterwards, to wit, in the term of May last aforesaid, before the judges last aforesaid, here at Wilmington, comes the said plaintiff, by B. G. Leonard, their attorney, and pray the court to sign and seal his bill of exceptions to the judgment aforesaid, which is by the court accordingly done, in form following, to wit:

Bill of exceptions.

STATE OF OHIO, CLINTON COUNTY,
Supreme Court for the said County, May Term, A. D. 1839.

JOHN STILES, ex dem. EFFIE COONS and others,
vs.
CHARLES P. GALLAHER.

Be it remembered, that at the present term of May, A. D. 1839, to wit: the 13th day of May, in the year aforesaid, came the parties aforesaid, both plaintiff and defendant, by their respective attorneys, and now here submit this case to the court, upon the statement of facts made at the last term of this court between the said parties, together with all the exhibits, depositions and other papers in the said statement referred to, said statement being signed by B. G. Leonard, for plaintiff, and S. Buck, attorney for defendant, and dated 16th May, 1838, and filed 16th May, 1838; which said statement, together with the exhibits, depositions and other papers therein referred to, are made a part hereof; and upon such submission, the court here are of opinion, and do find that the defendant is not guilty of the trespass and ejectment in the plaintiff's declaration mentioned, and thereupon it is considered by the court now here, that the defendant go hence, without day, and recover his costs, by him herein expended against the plaintiff, amounting to to which opinion, finding and judgment of the court, the plaintiff now here, by his counsel, excepts, and prays the court to sign and seal this, his bill of exceptions, and that the same, together with the said statement, exhibits, depositions and papers referred to in the said statement, be made a part of the record in this case, which is ordered by the court now here, and who accordingly sign and seal this bill of exceptions.

Signed and sealed, this 13th day of May, A. D. 1839, in open court, by the judges of said court.

REUBEN WOOD, [SEAL.]
F. GRIMKE. [SEAL.]

Ordered by the court, that a special mandate be sent to the court of common pleas, to carry this judgment into execution.

STATE OF OHIO,
Clinton County.

I, A. E. Strickle, clerk *pro tem.* of the supreme court of the State of Ohio, within and for the county of Clinton, aforesaid, do hereby certify that the above and foregoing contains a full and correct copy of the record made in the case of John Stiles, ex dem. Effie Coons, et al. vs. Charles P. Gallaher, aforesaid, as now remaining of record in my office.

In testimony whereof, I hereto set my name, and affix the seal of our said supreme court at Wilmington, this first day of October, in the year of our Lord one thousand eight hundred and thirty-nine. [SEAL.]

A. E. STRICKLE, Clerk pro tem.
Supreme Court, Clinton County, Ohio.

Clerk's fees $16. 50 cts.—Paid by G. FOOS, Atty.

A. E. STRICKLE, Clerk pro. tem.
by JOHN CARMAN.

SUPREME COURT OF THE UNITED STATES.

And the said John Stiles, ex dem. Effie Coons and others, plaintiffs below, and plaintiffs in error, here come and say there is error in the rendition of the said judgment of the supreme court of the State of Ohio, of the May term, A. D. 1839, in this, that the said judgment should not have been rendered for the defendant; and in this, that the said judgment should have been rendered for the plaintiff; and in this, that the said judgment is in violation of the right of the plaintiff, under the patent exhibited in the said proceedings, and bill of exceptions issued to Thomas J. McArther; and in this, that the said judgment is against, and in violation of, the provisions of the act of Congress, extending the time for making locations and surveys in the Virginia military district, and of the rights of the plaintiff under the said acts. Wherefore, and for divers other errors apparent upon the said record and in the said judgment, the plaintiff in error prays that the said judgment may be reversed and held for nought, &c.

B. G. LEONARD,
Atty. for plff. in error.

I allow a writ of error in this case, and the clerk will issue it on security being given.

JOHN McLEAN,
Justice Supreme Court of the United States.

The United States of America, to the honorable the judges of the Supreme Court of the State of Ohio, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action of ejectment, in the county of Clinton, which was in the said court, between John Stiles, ex dem. Effie Coons et al., plaintiff, and Charles P. Gallaher, defendant, manifest error hath intervened, as it is said, to the great damage of the said John Stiles, ex dem. Effie Coons, et al., as by his complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done, in this behalf, to the said parties, command you that the record, process, and judgment, aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right, and according to law, ought to be done.

Witness the honorable Roger B. Taney, Chief Justice of the United States of America, this 16th day of December, in the [SEAL.] year of our Lord one thousand eight hundred and thirty-nine, and in the 64th year of the American Independence.

Attest: WM. MINER, Clk.

Bond and security has been given according to law.

Attest: WM. MINER, Clk.

COLUMBUS, December 17, 1839.